

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	Facility ID No. 85028
	)	NAL/Acct. No. MB-200741410333
<b>Faith Baptist Church, Inc.</b>	)	FRN: 0012562708
	)	File No. BRED-20050401BWH
Licensee of KCAS(FM)	)	
McCook, Texas	)	
	)	

**FORFEITURE ORDER**

**Adopted: February 9, 2011**

**Released: February 10, 2011**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of eight thousand dollars (\$8,000) to Faith Baptist Church, Inc. ("Licensee"), licensee of radio station KCAS(FM), McCook, Texas ("Station"), for its willful and repeated violation of Section 73.3527 of the Commission's Rules ("Rules").<sup>1</sup>

**II. BACKGROUND**

2. On May 18, 2007, the Media Bureau issued a Notice of Apparent Liability for Forfeiture ("NAL") in the amount of ten thousand dollars (\$10,000) to Licensee for failure to retain all required documentation in the Station's public inspection file.<sup>2</sup> As noted in the NAL, Section 73.3527 of the Rules requires a noncommercial educational broadcast licensee to maintain a public inspection file containing specific types of information related to station operations.<sup>3</sup> The purpose of this requirement is to provide the public with timely information at regular intervals throughout the license period.<sup>4</sup> Among the materials required for inclusion in the file are the station's quarterly issues/programs lists, which must be retained until final Commission action on the station's next license renewal application.<sup>5</sup>

3. Section III, Item 3 of the Station's license renewal application form, FCC Form 303-S, requests that the licensee certify that the documentation required by Section 73.3527 has been placed in its station's public inspection file at the appropriate times. Licensee indicated "No" to that Item, explaining in the application that it did not timely place into the Station's public inspection file the issues/programs lists "for 11 of the 17 quarters since April 11, 2001, when the station went on the air."<sup>6</sup> Licensee also noted that it failed to file an ownership report due April 1, 2003, and therefore, it was not

<sup>1</sup> 47 C.F.R. § 73.3527.

<sup>2</sup> *Faith Baptist Church, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 9146 (MB 2007). The Station's renewal application was granted on May 18, 2007.

<sup>3</sup> 47 C.F.R. § 73.3527(a)(2).

<sup>4</sup> *Cf. Kathleen N. Benfield*, Letter, 13 FCC Rcd 4102 (MMB 1997) (citing *License Renewal Applications of Certain Commercial Radio Stations*, Memorandum Opinion and Order, 8 FCC Rcd 6400 (MMB 1993)).

<sup>5</sup> See 47 C.F.R. § 73.3527(e)(8).

<sup>6</sup> See File No. BRED-20050401BWH at Exhibit 11.

placed in the public inspection file.<sup>7</sup> Licensee stated that “for each of the quarters at issue, [it] has now placed a programs/issues list in the public file, and has instituted procedures to ensure that this requirement is met in the future . . . .”<sup>8</sup> On June 15, 2007, Licensee filed a “Request for Cancellation of Forfeiture” (“Response”).

4. In its Response, Licensee seeks reduction or cancellation of the proposed forfeiture based on its inability to pay and overall history of compliance. As evidence of financial hardship, Licensee has submitted financial statements (“Statements”) for both the Station and Licensee for calendar years 2004-2006 and the first five months of 2007.

### III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b)(2)(D) of the Act,<sup>9</sup> Section 1.80(b)(4) of the Rules,<sup>10</sup> and the Commission’s *Forfeiture Policy Statement*.<sup>11</sup> In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.<sup>12</sup>

6. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to GAAP; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.<sup>13</sup> In general, a licensee’s gross revenues are the best indicator of its ability to pay a forfeiture.<sup>14</sup> We recognize that, in some cases, other financial indicators, such as net losses, may also be relevant.<sup>15</sup> If gross revenues are sufficiently great, however, the mere fact that a business is operating at a loss does not by itself mean that it cannot afford to pay.<sup>16</sup>

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<sup>7</sup> *Id.* at Exhibit 8.

<sup>8</sup> *Id.* at Exhibit 11.

<sup>9</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>10</sup> 47 C.F.R. § 1.80(b)(4).

<sup>11</sup> *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

<sup>12</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>13</sup> *See Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441 (2004), *modified*, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (reducing forfeiture amount after review of the licensee’s federal tax returns demonstrated a financial hardship).

<sup>14</sup> *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992) (“*PJB Communications*”). Licensee questions whether we can apply our policy of using gross revenue to a non-profit entity (Response at 2, n.1). As noted in the *Forfeiture Policy Statement*, gross revenue is the “starting point” for all organizations, but inability to pay claims are assessed on a case-by-case basis in accordance with Section 503(b)(2)(D) of the Act (47 U.S.C. § 503(b)(2)(D); *Forfeiture Policy Statement*, 12 FCC Rcd at 17106). In addition, Commission precedent has consistently held noncommercial broadcasters to the same gross revenue standard starting point as commercial entities (*see, e.g., Bible Broadcasting Network, Inc.*, Forfeiture Order, 25 FCC Rcd 3851, 3853 (MB 2010)).

<sup>15</sup> *PJB Communications*, 7 FCC Rcd at 2089.

<sup>16</sup> *Id.*

7. Here, Licensee has provided us with financial statements for the years 2004, 2005, 2006 and the first five months of 2007.<sup>17</sup> While Licensee operated at a loss for the first five months of 2007, the 2004-2006 returns show that Licensee's gross revenues are approximately \$262,631, \$301,212, and \$249,946, respectively. The \$10,000 forfeiture in this case would represent approximately 3.6 percent of Licensee's average gross revenue over the three years for which Licensee provided yearly summaries.<sup>18</sup> We therefore believe that the gross revenues are sufficiently great when compared to the forfeiture amount such that the mere fact that Licensee may have experienced an operating loss does not demonstrate that it cannot afford to pay the forfeiture amount.<sup>19</sup> In considering claims of financial hardship, we have previously found forfeiture amounts as high as 5 percent of gross revenues to be reasonable.<sup>20</sup> We are unwilling to cancel or reduce the forfeiture in this case because the forfeiture represents less than four percent of Licensee's gross revenue.

8. Next, Licensee notes that its overall history of compliance merits a reduction or cancellation of the forfeiture amount. Commission records confirm this, and thus we will reduce the forfeiture on this basis from \$10,000 to \$8,000.<sup>21</sup>

9. We have considered the Response and the record of this case in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully<sup>22</sup> and

<sup>17</sup> See Response at 8-14.

<sup>18</sup> When assessing financial hardship claims, we look at licensee's revenues, as opposed to those of the station. See *College of the Holy Cross*, Forfeiture Order, 24 FCC Rcd 5508, 5510 (MB 2009) (finding that a document regarding the station's finances was insufficient information upon which to evaluate an inability to pay argument).

<sup>19</sup> The cases cited in the Response (*Rebus, Inc.*, Forfeiture Order, 16 FCC Rcd 2964 (EB 2001) ("*Rebus*") and *Delta Radio, Inc.*, Memorandum Opinion and Order and Forfeiture Order, 13 FCC Rcd 21708 (MMB 1998)) ("*Delta*") do not support Licensee's argument that its 2007 losses warrant a reduction in the forfeiture amount. We have cancelled or reduced forfeitures when the facts involve a compelling combination of modest gross revenues, significant losses, and/or evidence of financial difficulty. See, e.g., *KYKV(FM)* (formerly *KQBE(FM)*), *Selah, Washington*, Letter, DA 10-2221, ¶6 (MB Nov. 22, 2010) (noting that the Bureau ordinarily would have reduced the proposed forfeiture to five percent of licensee's average gross revenue of \$42,781, but instead canceled the forfeiture because licensee's losses exceeded its revenue by nearly seventy percent from 2005 through 2007); *KCSY(FM)* (formerly *KVLR(FM)*), *Twisp, Washington Valley Air, LLC*, Letter, 24 FCC Rcd 5505 (MB 2009) (cancelling forfeiture because, over a four year period, licensee's total losses were four times its average gross revenue of \$78,201); *Rebus* (reduced forfeiture where licensee with average gross revenue of \$201,782 demonstrated consistent losses over a three year period, lost the lease for its antenna site, and anticipated significant expenditures both in finding a new antenna site and repaying a loan associated with acquiring new emergency alert system equipment); *Delta* (reducing forfeiture where licensee demonstrated that it was operating at a loss and had neither funds nor insurance to cover expenses associated with a tower damaged by an ice storm and thus had taken the station off the air and returned to operation with low power pursuant to special temporary authorization for more than two years). Relative to the cases cited above, Licensee's gross revenues are substantial and its losses slight. Absent evidence of additional financial difficulty, we decline to reduce or cancel the proposed forfeiture on these grounds.

<sup>20</sup> See *CARE Broadcasting, Inc.*, Forfeiture Order, 25 FCC Rcd 1411 (MB 2010) (reducing amount of forfeiture to five percent where the proposed forfeiture amount would have constituted approximately 11 percent of Licensee's average gross revenues). See also *Grace Baptist Church*, Forfeiture Order, 25 FCC Rcd 7481 (MB 2010) (forfeiture reduced from 11.4 percent of licensee's average total revenue to five percent based on licensee's inability to pay the higher amount).

<sup>21</sup> See *Truman State University*, Forfeiture Order, 25 FCC Rcd 956 (MB 2010) (reducing proposed forfeiture by 20 percent based on licensee's history of compliance with the Rules).

<sup>22</sup> Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. NO. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern* (continued....)

repeatedly<sup>23</sup> violated Section 73.3527 of the Rules. However, given Licensee's history of compliance with the Rules, we reduce the forfeiture amount to \$8,000.

#### IV. CONCLUSION.

10. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,<sup>24</sup> that Faith Baptist Church, Inc., SHALL FORFEIT to the United States the sum of eight thousand dollars (\$8,000) for willfully and repeatedly violating Section 73.3527 of the Commission's Rules.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>25</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank--Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).<sup>26</sup> Licensee will also send electronic notification on the date said payment is made to Kelly.Donohue@fcc.gov and Maureen.McCarthy@fcc.gov. Requests for payment of the full amount of this Forfeiture Order under an installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, D.C. 20554.<sup>27</sup>

12. IT IS FURTHER ORDERED that a copy of this Forfeiture Order shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Faith Baptist Church, Inc., c/o Mr. Gary Albright, Pastor, 4301 N. Shary Rd., Palmhurst, Texas 78574 and Elise M. Stubbe, Esq., Hardy, Carey, Chautin & Balkin, L.L.P., 1080 West Causeway Approach, Mandeville, Louisiana 70471.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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*California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*").

<sup>23</sup> Section 312(f)(1) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(1). *See also Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

<sup>24</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

<sup>25</sup> 47 U.S.C. § 504(a).

<sup>26</sup> *See* 47 C.F.R. § 1.1914.

<sup>27</sup> *Id.*